

REMARKS

Claims 1-10 are pending in the application with claim 1 being the sole independent claim. By this Amendment, claims 1 and 3 are amended; and claims 8-10 are added. Support for claims 8-10 can be found, for example, in paragraphs [0022] – [0029] of the specification. No new matter is added.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 1-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishikawa et al. (hereinafter “Nishikawa”), U.S. Patent No. 6,658,457 in view of Daines et al. (hereinafter “Daines”), U.S. Patent No. 6,192,422. This rejection is respectfully traversed.

Nishikawa and Daines, individually or in combination, fail to disclose or suggest that the “size of the data buffer is determined by Ethernet data transmission distance on the SDH transmission network and transmission rate of Ethernet ports”, as recited in claim 1.

Nishikawa discloses an inter-networking device 10 designed to allocate an appropriate bandwidth for inter-networking purposes, based on the information on network traffic and available bandwidth resources (Abstract). More specifically, and with reference to Fig. 2 of Nishikawa, a path controller 14-1 allocates a bandwidth by choosing an appropriate path(s), and considers the total user bandwidth described in the contract, as well as estimating actual data traffic. The user may specify a desired bandwidth for the LAN interconnect service, in which case the specified bandwidth parameters are stored in the bandwidth resource database 13. The path controller 14-1 then chooses an appropriate bandwidth by combining, if necessary, several existing SDH channels having different bit rates so that it will meet the requirements of the bandwidth specified by the user (col. 5, lines 37-48). That is, Nishikawa only discloses that the size of the data buffer is determined by bandwidth resources and the different delays of the data stream (col. 7 lines 21-23 and col. 8, lines 50-51), rather than the

Ethernet data transmission distance on the SDH transmission network and transmission rate of the Ethernet ports.

Applicants submit that the secondary reference to Daines is merely directed to a conventional local area network (LAN), and not a SDH network. Applicants further submit that Daines also fails to disclose or suggest the size of the data buffer is determined by Ethernet data transmission distance on the SDH transmission network and transmission rate of Ethernet ports, as recited in claim 1.

Daines discloses a flow control device for monitoring the level indicators to determine if the amount of data in a port input buffer crosses a first threshold level and, if so, inserting congestion indication data into the port output buffer for transmission to the associated network node (col. 3, lines 50-61). That is, Daines merely discloses the size of the data buffer based on the amount of data in the port input buffers, and not based on the Ethernet data transmission distance on the SDH transmission network and transmission rate of Ethernet ports. Consequently, Daines does not make up for the deficiencies of Nishikawa noted above.

Further, one of ordinary skill in the art would not have been motivated to combine the teachings of Nishikawa and Daines with any expectation of success as the network in Daines fails to suggest that it can be employed in SDH transmission. Accordingly, if the alleged modification or combination of the prior art would change the principle of operation of the prior art invention, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. Absent such *prima facie* case of evidence, one of ordinary skill in the art would not have been motivated to combine the teachings of Nishikawa and Daines.

In sum, neither Nishikawa nor Daines disclose or suggest any relationship whatsoever between the size of data buffer and Ethernet data transmission distance, transmission rate of Ethernet ports. Accordingly, Applicants respectfully submit that claim 1 and those claims

dependent thereon are allowable over the applied art. Withdrawal of the rejection is respectfully requested.

Claims 5-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishikawa and Daines and further in view of Lin et al. (hereinafter "Lin"), U.S. Patent No. 6,754,179. This rejection is respectfully traversed.

Applicants submit that Lin fails to make up for the deficiencies of Nishikawa and Daines noted above. Claims 5-7 are allowable at least by virtue of their dependency to claim 1.

Further, the Examiner is using *impermissible hindsight* reconstruction to reject the claims. The Examiner has used the present application as a blue print, selected a prior art networking device as the main structural device, and then searched other prior arts for the missing elements without identifying or discussing any specific evidence or motivation to combine, other than providing conclusory statements regarding the knowledge in the art, motivation and obviousness.

For at least these reasons, Applicants respectfully submit that Nishikawa, Daines and Lin individually or in combination, fail to disclose or render obvious the features recited in independent claim 1. Claims 2-10 which depend from independent claim 1 are likewise distinguished over the applied art for at least the reasons discussed, as well as for the additional features they recite. Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION


Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-10 in connection with the present application is earnestly solicited.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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